

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Steve Drazkowski,
Complainant,
vs.
Daniel Richard Nelson,
Respondent.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING

TO: Steve Drazkowski, 14369 654th Street, Wabasha, MN 55981, and Daniel Richard Nelson 1070 Lyman Court, Chanhassen, MN 55317.

On July 3, 2006, Steve Drazkowski filed a Complaint with the Office of Administrative Hearings alleging that Daniel Nelson violated Minn. Stat. §§ 211B.04 and 211B.06 by preparing and disseminating false campaign material that lacked a disclaimer. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.06.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: July 6, 2006

/s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

The Complainant is a candidate for Senate District 28 and was seeking the Republican Party's endorsement at the April 29, 2006, endorsing convention. The Complainant alleges that on or about April 26, 2006, the Respondent distributed campaign material that lacked a disclaimer in violation of Minn. Stat. § 211B.04, and violated Minn. Stat. § 211B.06 by containing the statement, "Senate Candidate Abuses Daughter, Still Running," which purports to be a headline from the October 22, 2005, edition of the *Winona Daily News*. The Complainant maintains this headline was fabricated.

On April 26, 2006, the Minnesota Court of Appeals issued its decision in *Riley v. Jankowski*,¹ holding that the disclaimer requirement of Minn. Stat. § 211B.04 violates the First Amendment of the U.S. Constitution by directly regulating the content of pure speech and that there is no way to narrowly construe the statute to avoid the constitutional violation. Because the Minnesota Court of Appeals has determined that Minn. Stat. § 211B.04 is unconstitutional on its face, the Complainant's allegation that the campaign material violated Minn. Stat. § 211B.04 is dismissed.

However, the Administrative Law Judge concludes that the Complaint does allege a prima facie violation of Minn. Stat. § 211B.06 with respect to the alleged fabricated headline. If the evidence at the hearing were to establish that the statement, "Senate Candidate Abuses Daughter, Still Running," was not a headline in the *Winona Daily News* as claimed in the campaign flyer, those facts may be sufficient to establish a violation of Minn. Stat. § 211B.06. At the hearing, the Complainant will have to demonstrate by clear and convincing evidence that the Respondent intentionally participated in the preparation or dissemination of the campaign material and knew the statement at issue was false or communicated it to others with reckless disregard as to whether it is false.²

K.D.S.

¹ No. A05-1125 (Minn. App. April 26, 2006).

² Minn. Stat. § 211B.06.